IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

CRIMINAL APPEAL No.202 of 2001

S.Ramoo

... Appellant/Accused

-vs-

State rep by
Deputy Superintendent of Police
CBI / ACB / Chennai. ... Respondent/Complainant

Criminal Appeal filed against the conviction and sentence imposed by the Principal Special Judge for CBI Cases, Chennai, by Judgment, dated 21.02.2001, made in C.C.No.27/98.

For appellant : Mr.R.Sitaraman

For respondent : Mr.N.Chandrasekaran
Special Public Prosecutor for CBI Cases

J U D G M E N T

This Criminal Appeal has been preferred against the judgment, dated 21.02.2001 made in C.C.No.27/98 on the file of the Principal Sessions Judge for CBI Cases, Chennai.

2. The appellant is the accused before the trial court, who was convicted for an offence punishable under Section 7 of Prevention of Corruption Act, 1988 and sentenced to undergo 6 months R.I. and to pay a fine of Rs.1,000/- with default sentence and also convicted for an offence punishable under Section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988 and sentenced to undergo one year R.I. and to pay a fine of RS.2,000/- with default sentence.

3. The brief facts of the case are as follows :

The appellant / accused was employed as Deputy Secretary in the Madras Port Trust, Chennai, during the relevant period in the year 1997. As per the prosecution case, on 05.08.1997, the appellant / accused demanded a bribe of Rs.5,000/- and subsequently, accepted the same on

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07.08.1997, as illegal gratification from P.W.2, S.R.Venkatesan for arranging a job for him. The appellant was arrested, on the ground that he had received the illegal gratification on 07.08.1997 in his Office at Port Trust, Administrative Block and thereby committed offence punishable under Section 7 and Section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988.

4. As per the records available, it is seen that necessary santion under Section 19(1) (C) of the said Act was accorded by the competent authority. After furnishing of copies of documents to the appellant / accused under Section 207 Cr.P.C and after hearing both sides, the trial court framed the following charges against the appellant / accused :
Charge No.I : The accused being a public servant has demanded an illegal gratification of Rs.5,000/- from Shri.S.R.Venkatesan, as incentive or reward for arranging for him a job in the Port Trust to him, other than legal remuneration on 05.08.1997. The accused subsequently, on 08.08.1997 between 2.15 p.m and 2.30 p.m, demanded and accepted the said amount of Rs.5,000/- from Shri Venkatesan as illegal gratification for the above said purpose and thereby committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988.
Charge No.II : The accused being a public servant functioning as Deputy Secretary at Port Trust, Chennai, on 08.08.1997 by corrupt or illegal means or by otherwise abusing his position as public servant, had obtained for himself a pecuniary advantage to the extent of Rs.5,000/- from Shri.S.R.Venkatesan on the above date, as illegal gratification and thereby committed an offence punishable under Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.

5. As the charges were denied by the appellant / accused, the case was posted for trial. In support of the prosecution case, P.Ws.1 to 7 were examined, and Exs.P.1 to 10 were marked, apart from M.Os.1 to 5. On the side of the appellant / accused D.W.1 and D.W.2 were examined.

6. According to Mr.R.Sitaraman, learned counsel appearing for the appellant, the alleged demand and acceptance of illegal gratification was falsified by the evidence of D.W.2. He has further contended that as per the evidence of the defacto complainant, he could not have met the appellant / accused on 05.08.1997 and asked the complainant to meet him on 07.08.1997. He has further contended that the prosecution case is vitiated on account of delay caused by the prosecution.

7. Per contra, Mr.N.Chandrasekan, learned Special Public Prosecutor for CBI Cases, appearing for the respondent contended that the evidence of D.W.2 does not create any suspicious circumstance in favour of the appellant /accused. According to him, there is no delay, so as to vitiate the prosecution case and the defence raised by the appellant / accused are trivial in nature, and not legally sustainable and according to him, the guilt against the appellant has been proved beyond reasonable doubt.

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8. It is not in dispute that P.W.1 was the Chairman of the Madras Port Trust, during the relevant period and as the competent authority for appointment and removal of the officers, employed in the cadre of Deputy Secretary, Port Trust, Chennai, sanction was accorded by him and the notification for the same was marked as Ex.P.1.

9. As per the evidence of P.W.2, on the advice of Bala @ Balasubramaniam, he contacted the Deputy Secretary, Port Trust, the appellant / accused herein for getting a job in the Port Trust of Chennai, in the Sportsmen quota and produced necessary certificates, relating to his qualification for the said appointment. Then, on the advice of the appellant / accused, P.W.2 again met him on 05.08.1997, while so, the appellant / accused demanded Rs.10,000/- as bribe to arrange for the job, then, he accepted to receive a bribe of Rs.5,000/- and accordingly, he instructed that the amount should be paid on 08.08.1997. As P.W.2 did not want to give any bribe, on 07.08.1997 itself, he lodged a complaint before the Superintendent of Police, CBI, Chennai, and on his direction, he met P.W.4, Inspector Sunil, who introduced P.W.2 to the other witnesses, who were present there. Then, as per the advice of the Inspector, P.W.2 arranged Rs.5,000/- as bribe and went to CBI Office on 08.08.1997 at 10 a.m. At that time, the prosecution witness, Mr.Sriram (P.W.3) was introduced to P.W.2 by the Police Officers. The aforesaid Inspector read out the written complaint given by P.W.2 and P.W.2 handed over the bribe amount of Rs.5,000/- to the Inspector and the Inspector, subsequently demonstrated Phenolphthalein test to P.W.2 and other witnesses. The said amount was placed in the shirt pocket of P.W.2 and advised him to hand over the above money to the appellant / accused on his demand, till such time, P.W.2 was advised not to touch the currency notes. P.W.3, Sriram, accompanied P.W.2 to the appellant, stating him as his cousin brother and after the receipt of the bribe amount by the appellant/ accused, P.W.3 Sriram gave signal to the Inspector.

10. The complaint / report given by P.W.2 was marked as Ex.P.3. The entrustment mahazar signed by witnesses was marked as Ex.P.4 before the trial court. The aforesaid witnesses immediately after the signal, started to the Office, where the appellant was working. P.W.2 and P.W.3 went to the seat of the appellant / accused, who was not available there. At about 2.15 p.m, when the accused came to his seat, P.W.2 introduced P.W.3 as his cousin brother, then, the appellant/ accused took them to the Auditorium in the fourth floor, where he demanded the bribe amount and P.W.2 handed over the bribe amount of Rs.5,000/- to the appellant / accused, which was received by the appellant / accused by both of his hands and put the same in the back pocket of his pant. On seeing the same, P.W.3, Sriram went out of his office and gave signal. Then, P.W.4, Inspector with other officials entered into the office of the appellant / accused and informed the appellant / accused that he was under arrest. The appellant was brought to the office room, sodium carbonate solution was prepared in a glass tumbler and the right hand fingers of the accused was directed to dip in to the solution. Accordingly, when the appellant dipped his fingers in the solution, the same turned into pink colour. The solution was preserved in

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a bottle and label A was affixed. Separate sodium carbonate tests were conducted for the left hand fingers and the back side pocket of the pant of the accused. During the said test, the sodium carbonate solution turned into pink colour. The solution were preserved in separate bottles and labeled B and C were affixed on them. Witnesses have signed on the labels. Then the accused was personally searched. The personal money of Rs.700/- was returned to the appellant / accused, though bribe amount of Rs.5,000/- was seized from him. The mahazar Ex.P.5 was singed by the witnesses. Thus, the trap proceedings were completed at about 5.30 p.m, on the same day in the presence of the witnesses.

11. It is clear that the prosecution has to establish the demand of bribe or illegal gratification made by the appellant / accused, the acceptance of such illegal gratification and subsequent recovery of the same from him.

12. As per the first charge, the appellant / accused has committed offence punishable under Section 7 of Prevention of Corruption Act, 1988, by demanding a bribe of Rs.5,000/- as illegal gratification from the complainant on 05.08.1997 and 08.08.1997.

13. Learned counsel appearing for the appellant would argue that non-examination of Balasubramaniam by the prosecution would create suspicion on the evidence of P.W.2. Admittedly, the said Balasubramainam was not examined as prosecution witness, but, he has been examined as defence witness (D.W.2). He has deposed that he is a friend of P.W.2 and the father of P.W.2 had expired during the month of July 1997 and in the last week of July 1997, P.W.2, approached him and requested to arrange for a job. As D.W.2 supported the evidence of P.W.2, he was treated hostile by the counsel for the accused. Therefore, the non-examination of the said Balasubramaniam as prosecution witness will not affect the prosecution case.

14. As per the evidence of P.W.2, he met the appellant / accused on 28.07.1997 for the first time. In the written report filed by P.W.2, he has mentioned the said date. According to P.W.2, subsequently on 05.08.1997, he met the appellant / accused to arrange for a job in the Madras Port Trust under sports quota and the accused originally demanded Rs.10,000/- as bribe and finally the proposed amount of illegal gratification was reduced to Rs.5,000/- by the appellant and asked P.W.2 to bring the said amount on 08.08.1997.

15. Learned counsel for the appellant / accused contended that as per the prosecution case, P.W.2 met the appellant on 28.07.1997, then on 05.08.1997, but the complaint / report was filed only on 07.08.1997 and there is no explanation for the delay by the prosecution.

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16. Per contra, learned Special Public Prosecutor drew the attention of this Court to the evidence of P.W.2, where he has stated that he had gone through the newspapers that CBI would take appropriate action in such cases and hence, he went to the CBI Office on 07.08.1997 and lodged Ex.P.3, the Complaint. In Ex.P.3, Superintendent of Police, CBI, has also made endorsement directing the Inspector to take appropriate action on the complaint. Therefore, as held by the court below, the delay has been explained and hence, the same would no way affect the prosecution case.

17. It is seen that after registering FIR, P.W.2 was directed to produce Rs.5,000/- on 08.08.1997 to arrange for the trap proceedings against the appellant. The evidence of P.W.2 supported by other corroborative evidence would show that the alleged bribe / illegal gratification, was demanded by the appellant / accused, a public servant. Prior to the trap proceedings, P.W.2 lodged his written complaint before the CBI authorities and the FIR was registered. The evidence of P.W.2 and P.W.3 would be sufficient for the demand of illegal gratification by the appellant / accused from P.W.2. It has been established by the prosecution by way of phenolphthalein test that the appellant / accused had received the amount by both hands and put it in his back side pant pocket, subsequently, when he was asked to dip his hands in sodium carbonate solution, his fingers turned into pink colour. The currency were also recovered under the mahazar in the presence of witnesses and marked as M.O.1. Therefore, as contended by the Special Public Prosecutor, the prosecution has established the demand of illegal gratification by the appellant / accused from P.W.2, the receipt of the said amount by the appellant from P.W.2 in the presence of P.W.3, who introduced himself as cousin brother of P.W.2. The phenolphthalein test and the recovery of the currency notes from the appellant / accused would clearly show that the prosecution has established the guilt against the appellant / accused beyond reasonable doubt.

18. The Hon'ble Apex Court has held in the decision, Madhukar Bhaskarrao Joshi vs. State of Maharashtra, reported in 2002 SCC (Cri) 34, that mere fact that the currency notes reached the hands of the appellant is not a sufficient corroboration of the trap witness. But, in the instant case, the demand of illegal gratification, receipt and recovery of the same from the appellant / accused have been established beyond reasonable doubt.

19. Therefore, I am of the considered view that the defence raised by the appellant / accused would hold no water and on the facts and circumstances, I could find no error or infirmity in the judgment of conviction and sentence rendered by the court below, so as to warrant the interference of this court. Hence, the appeal fails.

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20. In the result, confirming the conviction and sentence, imposed by the court below, this Criminal Appeal is dismissed.

tsvn

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Special Judge for CBI Cases, Chennai

2. Deputy Superintendent of Police
CBI / ACB / Chennai.

3. The Public Prosecutor, High Court of Madras, Chennai.

KV(CO)
dcp/08.06.2007 Crl.A.No.202 of 2001

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